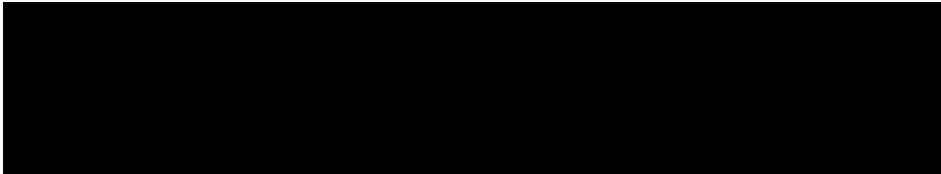




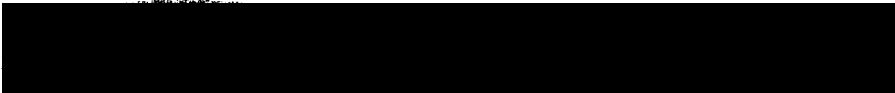
U.S. Citizenship
and Immigration
Services

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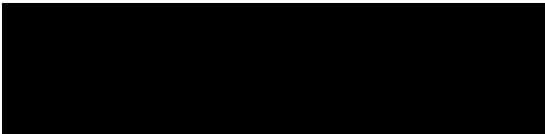
File: WAC 02 199 52962 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary



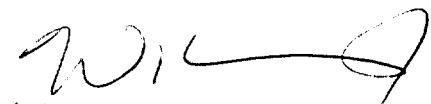
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

Identifying data deleted to
prevent disclosure of personal privacy
information

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

On November 5, 2002, the director denied the petitioner's nonimmigrant visa petition. It is noted that the director properly gave notice to the petitioner that it had 33 days to file the appeal. Counsel for the petitioner filed an appeal on December 12, 2002, 37 days after the director issued the denial. On May 9, 2003, the director issued a Notice of Rejected Appeal, informing the petitioner that the appeal was not timely. In a Motion to Reopen or for Reconsideration dated June 7, 2003, counsel for the petitioner asserted that the date of mailing an appeal constitutes the date of filing. As counsel provided evidence that the appeal was mailed on December 6, 2002, within 33 days from the date of the director's decision, counsel claimed that the appeal was timely. On July 14, 2003, the director granted counsel's motion and provided that the appeal will be deemed as timely filed.

However, according to 8 C.F.R. § 103.2(a)(7)(i), December 12, 2002 was the date of filing, as that was the date that the appeal was received in a CIS office and stamped to show the time and date of actual receipt. As December 12, 2002 was 37 days after the director's denial, the appeal was not timely. The director's decision granting the motion will be withdrawn.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The director's decision is withdrawn. The appeal is rejected.